



Managed Services for BadgerNet Converged Network Contract
(#505004-O14-BCNMGSRVCS-01)

This Contract (or "Agreement") is between the State of Wisconsin ("State") as represented by its Department of Administration, ("State") and AT&T Corp on behalf of itself and as an agent of Wisconsin Bell Inc. and other AT&T affiliates (individually and collectively "AT&T" or "Contractor"). The State and the Contractor are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

This Contract is entered into by the State in reliance upon the capability of the Contractor to meet the requirements of the State as set forth in its Request for Proposal RFP 28167-AW ("RFP") and following evaluation of the Contractor's capabilities as set forth in its response to said RFP.

This Contract and the following documents incorporated by reference into the Contract constitute the entire agreement of the parties and supersedes all prior communications, representations or agreements between the parties, whether oral or written. This Contract may not be modified or amended except by mutual agreement of both parties in writing. Any conflict or inconsistency will be resolved by giving precedence in the following descending order:

- a. The terms of this Contract including all exhibits and attachments.
- b. The terms of RFP # 28167-AW, including any amendments thereto and as modified by AT&T's response.

The following documents, including all subparts thereof, are attached to this Contract and are made a part of this Contract for all purposes:

- Exhibit 1 – Scope of Services and Attachments A-F
- Exhibit 2 – Service Categories and Service Level Agreements
- Exhibit 3 – DET Security Policies
- Exhibit 4 – AT&T Acceptable Use Policy
- Exhibit 5 – AT&T E-rate Rider
- Exhibit 6 – Pricing

Notwithstanding anything to the contrary contained herein, this Agreement is contingent upon AT&T, within thirty (30) days after the Effective Date; entering into all subcontracts and/or other legal arrangements that AT&T determines that AT&T requires to perform AT&T's obligations under this Agreement. If AT&T does not enter into such subcontracts and/or other legal arrangement on or prior to that date, either party may cancel this Agreement, in which case this Agreement shall be deemed void ab initio; provided, however, that AT&T will continue to perform AT&T's obligations under the Existing Agreements.

Nothing in this Agreement is intended to create an obligation on the State to exclusively purchase Services or Deliverables (in whole or in part) from Contractor, or grants, or is intended to grant to Contractor the right to exclusively provide its Services or Deliverables to Customer.

BadgerNet Converged Network Managed Services

Customer has requested that AT&T sign this Agreement first, and AT&T has agreed to do so. This Agreement as signed by AT&T shall be binding upon Customer from the time of Customer's signature, and AT&T will begin implementing the agreement when a fully signed copy is returned by Customer, provided such fully signed copy is returned to AT&T not more than thirty (30) days after AT&T delivered a signed copy to Customer. Further, any and all changes made to the Agreement after signature by AT&T shall be void and of no effect, unless and until incorporated into a written amendment to this Agreement signed by both Parties, except for changes expressly authorized by the terms of this Agreement.

IN WITNESS WHEREOF, the Parties hereto by their duly authorized representatives have executed this Contract with full knowledge of and agreement with the terms and conditions of this Contract.

For State of Wisconsin
(Department of Administration)

For Contractor
(Contractor Address)

Printed Name

Printed Name

Title

Title

Signature

Signature

Date

Date

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1. DEFINITIONS

Words and terms shall be given their ordinary and usual meanings. Unless negotiated otherwise by the parties, where capitalized, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter.

“Acceptance” means a manifestation of assent by the State to the terms, Services, Deliverables or other items offered by the Contractor under the Contract after Inspection by the State.

“Agency” or **“State Agency”** means an office, department, agency, institution of higher education, association, society or other body in the State of Wisconsin government created or authorized to be created by the State Constitution or any law, which is entitled to expend moneys appropriated by law, including the legislature and the courts, but not including an authority, as defined in Wis. Stat. s. 16.70(2).

“Acceptable Use Policy” means Contractor’s Acceptable Use Policy (“AUP”) which applies to (i) Services provided over or accessing the public Internet and (ii) wireless (*i.e.*, cellular) data and messaging Services that access the public Internet.

“BCN Customer” means an entity that acquires services under this Contract through the MSP. Entities are defined under state statute [Wisconsin Statute 16 subch IX](#), (agencies as defined in [Wisconsin Statute 16.70 \(1e\)](#), municipality as defined in [Wisconsin Statute 16.70 \(8\)](#).

“Business Day” means any day on which the Contracting Agency is open for business.

“Class of Service” means network policies that align network resources with business objectives and are enforced by means of QoS.

“Confidential Information” means all tangible and intangible information and materials being disclosed or accessed in connection with this Contract, in any form or medium without regard to whether the information is owned by the State or by a third party, which satisfies at least one of the following criteria: (i) Personally Identifiable Information; (ii) Proprietary Information; (iii) non-public information related to the State’s employees, customers, technology (including data bases, data processing and communications networking systems), schematics, specifications, and all information or materials derived therefrom or based thereon; or (iv) information expressly designated as confidential in writing by the State. Confidential Information includes all information that is restricted or prohibited from disclosure by state or federal law.

“Contracted Personnel” means a Contractor’s employees or other personnel (including officers, agents and Subcontractors) provided by the Contractor specifically to render Services under this Contract.

“Day” means calendar day unless otherwise specified in this Contract.

“Customer Edge” or **“CE”** means the device that is owned and managed by the BCN Customer. This device hosts the UNI-C interface port (e.g., a BCN Customer’s firewall, router, switch or PC).

“Customer Premise Equipment” or **“CPE”** means the Service Provider’s managed device that resides at the BCN Customer’s location. This device hosts an UNI-N interface port (e.g., a Service Provider’s managed router, switch or cable modem).

“Default” means the omission or failure to perform a contractual duty, provide Deliverables, or render Services as contractually required.

“Degradation” means the condition that occurs when communication performance parameters fall outside predetermined limits, resulting in a lower quality of services. A Service that suffers Degradation shall be considered to be suffering an Outage or Interruption for purposes of performance requirements (e.g., the SLAs).

“Deliverables” means all project materials, including Goods, software licenses, data, and documentation created during the rendering of Services hereunder. Deliverables shall be the property of the State of Wisconsin unless otherwise specified in the Contract.

“Effective Date” means the date on which the last party signs the Agreement unless a later date is required by regulation or law.

“E-Rate Rider” means the E-rate Rider document attached hereto and incorporated herein as Exhibit 5, to be executed by all e-rate eligible schools and libraries including, without limitation, TEACH, who will purchase Services and Deliverables from AT&T, subject to the terms and conditions of this Contract. The E-rate Rider is intended to delineate AT&T’s and the E-rate customer’s respective roles and responsibilities concerning E-rate requirements.

“Ethernet Service Port” means the UNI-N port used by a Service Provider to deliver BCN services to the BCN Customer.

“Fault Management” means the set of functions that detect, isolate, and correct malfunctions in a network, compensate for environmental changes, and include maintaining and examining error logs, accepting and acting on error detection notifications, tracing and identifying faults, carrying out sequences of diagnostics tests, correcting faults, reporting error conditions, and localizing and tracing faults by examining and manipulating database information.

“Goods” means articles of trade or items of merchandise, supplies, raw materials, or finished products, and may also include incidental or related services as the situation may require.

“Inspection” means an examination of Deliverables or Services provided under this Contract in order to determine their fitness for use.

“Key Personnel” means Contracted Personnel, specifically identified in Exhibit 1 Scope of Service that play a lead and critical role in rendering Services during the Contract term.

“Move, Add, Change, Delete” (MACD) means a service that provides moves, adds, changes and deletes of network hardware and software or services.

“Multicast Services” means the ability to broadcast one or more media streams to multiple users simultaneously within a geographical region.

“Multi-cast” means communication between a single device and multiple members of a device group.

“Near Real Time Monitoring” means service that enables a Service Provider to record network traffic, check server availability, and monitor a network’s performance, customize alarms which can send out notifications of problems or a specified threshold is being crossed.

“Near Real Time” means the time delay introduced by network transmission between the occurrence of an event and the use of the processed data, such as for display or feedback. For example, a near-real-time display depicts an event or situation as it existed at the current time minus the processing time, at nearly the time of the live event.

“NRC” means non-recurring charge.

“Personally Identifiable Information” means an individual’s last name and the individual’s first name or first initial, in combination with and linked to any of the following elements, if that element is not publicly available information and is not encrypted, redacted, or altered in any manner that renders the element unreadable: (a) the individual’s Social Security number; (b) the individual’s driver’s license number or state identification number; (c) the number of the individual’s financial account, including a credit or debit card account number, or any security code, access code, or password that would permit access to the individual’s financial account; (d) the individual’s DNA profile; or (e) the individual’s unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation, and any other information protected by state or federal law.

“Preventative Maintenance” means, in general, tasks that are done to retain the healthy condition of equipment and prevent failure.

“Point to Point” means a connection with only two endpoints.

“Proof of Concept” means a demonstration that proves an idea/technology works as proposed.

“Proprietary Information” means information, including a formula, pattern, compilation, program, device, method, technique or process to which all of the following apply:

- a. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
- b. The information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

“Public Information” means information that (i) is collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body or for a governmental body; and (ii) the governmental body owns or to which it has a right of access.

“QoS” means Quality of Service.

“Service Component” means an individual component of a Service provided under this Agreement.

“Service Delivery Point” means the end point where the user receives the service.

“Service Demarcation” means the dividing line that isolates the area of responsibility for the BCN service between the MSP and the BCN Customer. BCN demarcation point for the MSP is the UNI-N Ethernet interface port. BCN demarcation point for the BCN Customer includes both the UNI-C Ethernet interface port and cabling to the UNI-N port.

“Service Provider” means the entity that provides bandwidth and network access.

“Service Level Agreement” (SLA) means an agreement between two or more parties, where one is the BCN Customer and the others are Service Providers and specifying in measurable terms, what services the provider(s) must furnish.

“Services” means all work performed, and labor, actions, recommendations, plans, research, customizations, modifications, documentation, and maintenance and support provided by the Contractor necessary to fulfill that which the Contractor is obligated to accomplish under this Contract.

“SOW” means Statement of Work.

“State” means the State of Wisconsin.

“Subcontract” means an agreement, written or oral between the Contractor and any other party to fulfill the requirements and performance obligations of this Contract.

“Subcontractor” means an entity that enters into a Subcontract with the Contractor for the purpose of delivering Deliverables or performing obligations of this Agreement or rendering Services to the State.

“TEACH” (Technology for Educational Achievement) the program established by the Wisconsin Legislature under Subchapter IX of Wis. Stat. Ch. 16 to provide support for investments in educational technology.

“Time to Repair” (TTR) means the measurable time a trouble ticket is established at the MSP’s Network Operations Center (NOC) through any means until the MSP’s trouble ticket is changed to resolved status after site validation.

“Unicast” means communication from one device to another device over a network.

“User Network Interface” or “UNI” means the service demarcation between the responsibility of the Service Provider and the responsibility of the BCN Customer.

“User Network Interface-C” or “UNI-C” means the physical Ethernet port hosted on the CE device and is the interface BCN Customers use to attach their equipment to the Service Provider's UNI-N interface to

receive BCN services. The Customer is responsible to provide the cable between the UNI-C and UNI-N interface. The UNI-C and cable serves as the BCN Customer's demarcation point of the UNI.

"User Network Interface-N" or "UNI-N" means the physical Ethernet port hosted on the Service Provider's managed equipment. The UNI-N is the interface that the BCN Customer attaches its device to receive BCN network services. The UNI-N serves as the Service Provider's demarcation point of the UNI.

"Work Center" means a charitable organization or nonprofit institution which is licensed under s. 104.07 and incorporated in this State or a unit of county government which is operated for the purpose of carrying out a program of rehabilitation for severely handicapped individuals and for providing the individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature, and which is engaged in the production of materials, supplies or equipment or the performance of contractual services in connection with which not less than 75% of the total hours of direct labor are performed by severely handicapped individuals.

2. SCOPE OF THE AGREEMENT

The Contractor shall provide the Services and Deliverables necessary to serve as the BadgerNet Converged Network (BCN) Managed Service Provider (MSP) to provide and operate BCN to support the State's business requirements for transporting all data, providing network access and bandwidth for BCN Customers and managing the activities, roles, and assignments of the Service Providers (i.e., entities that provide bandwidth and network access) engaged by the MSP to deliver the required BCN services. Services and Deliverables shall be consistent with the terms, conditions and requirements contained in this Agreement and all exhibits thereto, including, but not limited to, any Statement of Work.

This Agreement shall be deemed the definitive and complete statement of Contractor's obligations with regard to substantive matters addressed in the Agreement. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of the RFP and Contractor's Proposal, this Agreement together with any documents attached hereto, including but not limited to the exhibits, shall control. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of Exhibits 1, 2, 4 and 6, respectively, the terms of Exhibits 1, 2, 4 and 6 respectively shall control.

The Parties anticipate that, at a minimum, the Contractor shall provide the following service offerings:

- 2.1. **Category A (WAN Service with Quality of Service (QOS)).** Symmetrical end-to-end service delivery from one User Network Interface (UNI-N) at a site to a UNI-N at another site or service with the ability to support layer 2 protocol tunneling, VLAN tag preservation, multiple Class of Service (CoS) containers, point-to-point, multipoint, and full-mesh Ethernet services with bandwidth increments only at Ethernet interface speed with SLA requirements.
- 2.2. **Category B (WAN Service without QOS).** Either symmetrical or asymmetrical end-to-end service delivery from one UNI-N at a site to a UNI-N at another site or service, providing point-to-point, multipoint, and full-mesh Ethernet services with SLA requirements. This network service category is inherently better performing as far as jitter and latency than Internet service. The State considers this service category to be a best effort service.
- 2.3. **Category C (Broadband Internet Services).** Either symmetrical or asymmetrical service providing minimal SLA requirements which consist of the following three (3) options:
 - (a) Symmetrical: This service includes the transport from the site to ISP Portal and ISP portal and both components come from the same vendor. It is without QOS or SLAs. The bandwidth for each service is the same and the bandwidth to and from the portal is the same.
 - (b) Asymmetrical: Also called "Broadband," "IP Broadband," "DSL" or "Cable Modem." This service is without QOS or SLAs. The transport provider and the portal provider are the same vendor. Download bandwidth (from the portal to the site) are faster than Upload Bandwidth (from site to portal).
 - (c) MIS on BadgerNet: A Symmetrical service without QOS or SLAs. This is a special service, currently only available to schools, school districts, libraries and library systems. For schools and school districts the ISP Portal Access pricing is based on the student enrollment of the School District. For libraries and library systems, the ISP Portal Access pricing is based on the student enrollment in the public school district in which the main branch of the library is located. Transport must be Category B with standard pricing. The service is Symmetrical in that the Upload and Download speeds are the same. The Portal doesn't have a bandwidth associated with it. The Portal bandwidth matches the schools requirements and is only capped by the Transport Speed.
- 2.4. **Category D (Ethernet Services).** The service requires symmetrical end-to-end service delivery from one User Network Interface (UNI-N) at a site to a UNI-N at another site or service with the ability to support 802.1AE transport, support layer 2 protocol tunneling, VLAN tag preservation, multiple Class of Service (CoS) containers, point-to-point, multipoint, and full-mesh Ethernet services with bandwidth increments only at Ethernet interface speed with SLA requirements.

Additionally, this service category will have lower latency and higher bandwidth requirements. At a minimum, this service category shall be provided in the Madison metro area. The State recognizes that an Ethernet hand-off (interface) is not the same as "Ethernet service" offering.

- 2.5. **MSP Services.** Provide single point of contact and responsible for all BCN network and administrative services, ensuring network access and bandwidth for BCN Customers as well as managing the activities, roles, and assignments of the Service Providers (i.e., entities that provides bandwidth and network access) engaged by the MSP to deliver the required BCN services.

3. APPLICABLE LAW

This Contract shall be governed by the laws of the State of Wisconsin. Venue for any action brought under this Contract shall lie in Madison, Dane County, Wisconsin in Circuit Court of Dane County or in the Federal District Court for the Western District of Wisconsin, as appropriate.

4. TERM

The Contract term shall be for seven (7) years from the Effective Date unless sooner terminated as provided herein with no renewal options.

5. PRICING

All rates and charges set out Exhibit 6-Pricing are fixed during the Term of the Agreement unless mutually amended by the Parties and are exclusive of any applicable taxes, regulatory fees or surcharges. .

6. TERMINATION FOR CAUSE

The State may terminate this Contract for cause after providing the Contractor with thirty (30) Days written notice of the Contractor's right to cure a failure of the Contractor to perform under the terms of this Contract.

The Contractor may terminate this Contract for cause after providing the State with sixty (60) Days written notice of the State's right to cure a failure of the State to perform under the terms of this Contract.

7. TERMINATION FOR CONVENIENCE

The State may terminate this Contract at any time, without cause and without liability or penalty, by providing a written notice to the Contractor at least thirty (30) Days in advance of the intended date of termination.

Contractor may terminate this Contract at any time, without cause, by providing a written notice to the other party at least sixty (60) Days in advance of the intended date of termination.

In the event of a termination for convenience, the Contractor shall be entitled to receive compensation for any completed or partially completed Services rendered or Deliverables provided under the Contract. Compensation for partially completed Services shall be no more than the percentage of completion of the Services requested, as determined by the State in its sole discretion, multiplied by the corresponding payment for completion of such Services as set forth in the Contract. Alternatively, at the sole discretion of the State, the Contractor may be compensated for the actual Service hours provided. The State shall be entitled to a refund for Deliverables or Services paid for but not received or rendered, such refund to be paid within two (2) billing cycles of written notice to the Contractor requesting the refund.

8. CONTRACT CANCELLATION

- 8.1. The State reserves the right to cancel this Contract in whole or in part without liability or penalty, if Contractor:
 - Files a petition in bankruptcy, becomes insolvent, or otherwise takes action to dissolve as a legal entity
 - Makes an assignment for the benefit of creditors; or
 - Fails to maintain the confidentiality of the State's information that is considered to be Confidential Information

8.2. The State reserves the right to cancel this Contract in whole or in part without penalty, with 30 days' prior written notice and an opportunity to cure within such thirty (30) day period or such longer time as agreed to by the parties, if the Contractor:

- Fails to follow the sales and use tax certification requirements of s. 77.66 of the Wisconsin Statutes;
- Incurs a delinquent Wisconsin tax liability;
- Fails to submit a non-discrimination or affirmative action plan as required herein.
- Fails to maintain and keep in force all required insurance, permits and licenses as provided in this Contractor;
- Fails to follow the non-discrimination or affirmative action requirements of such. II, Chapter 111 of the Wisconsin Statutes (Wisconsin's Fair Employment Law); or
- Becomes a state or federally debarred contractor

9. SUSPENSION OF SERVICES

Contractor may take immediate action to suspend affected Services under this Agreement for a violation of the Acceptable Use Policy (AUP) [Exhibit 4] if in the exercise of its reasonable discretion, Contractor determines that such suspension is necessary in order to protect Contractor from the imminent threat of irreparable harm (including, without limitation, actions in response to an order from a court or regulatory body with jurisdiction over Contractor, or where BCN Customer content is likely to involve a criminal violation of law by Contractor (in the reasonable judgment of Contractor counsel), or harm to Contractor's network or its ability to provide services to other customers). Contractor will use reasonable best efforts to provide notice in advance of such suspension, but notice shall not be a prerequisite in the case of imminent threat of irreparable harm.

- 9.1. For other violations of the AUP, or where a violation of the type stated above violates the AUP and Contractor concludes in good faith that such content could pose a threat to its reputation, brand, economic interests or interconnection arrangements with other IP networks but such harm does not constitute an imminent threat of irreparable harm, Contractor may, upon thirty (30) days written notice, suspend Service under the applicable AUP [Exhibit 4] unless during that time the BCN Customer cures or ceases the violation. Notwithstanding the foregoing, if during the this period, circumstances change such that harm caused by a violation rises to the level of an imminent threat of irreparable harm, then Contractor may suspend the affected Services as set forth in subsection above.
- 9.2. Any suspension by Contractor under this Section shall be as limited in scope and duration as possible, consistent with Contractor's needs to protect its rights, property and customers, and shall be commensurate with the seriousness of the consequences to Contractor of State's violation or failure to perform. If the violating act is by a BCN Customer, Contractor will suspend only as to that BCN Customer. Contractor will remove any suspension promptly upon learning that such suspension is not warranted, or receipt of notification from the BCN Customer and verification of its cure of the violation, or upon cessation of the violation. In the event a Service is suspended for thirty (30) days or more pursuant to this Section, the BCN Customer may notify Contractor of its intent to terminate such Service. Unless Contractor notifies the BCN Customer within seven (7) days of receipt of the notice, that Contractor will immediately resume providing Service, the BCN Customer may terminate the suspended Service without liability or penalty, provided that termination liability will not apply where: (i) the suspension is due to reasons outside its control; (ii) the AUP violation does not constitute a material breach of the Agreement; or (iii) the AUP violation does not constitute a violation of Applicable Law by the BCN Customer. The BCN Customer State shall not be obligated to pay for Services for the period that they have been suspended pursuant to this Section.

9.3. This Section sets forth Contractor's sole and exclusive rights to suspend the provision of Services.

10. TRANSITION SERVICES

Upon cancellation, termination, or expiration of this Contract for any reason, the Contractor shall provide such reasonable cooperation, assistance and Services, and shall assist the State in the migration of the State's production operations to the State's control or to the control of an alternative contractor upon written notice to the Contractor at least sixty (60) Business Days prior to termination or cancellation, and subject to the terms and conditions set forth herein. This Contract shall automatically be extended by the number of Days that training or continued Services are necessary to be performed in order to complete the transition for a period up to twelve (12) months. The Contractor's Services required to complete the transition after the notice set forth herein shall be within this Contract's scope and shall not be the subject of any change order. Any additional Fees associated with the performance of the Transition Services will be mutually agreed to by the Parties.

11. POST CONTRACT OBLIGATIONS

Upon the termination of this Contract for any reason, or upon Contract expiration, each party shall be released from all obligations to the other party arising after the date of termination or expiration, except for those that by their terms survive such termination or expiration.

12. COMPLIANCE AND RESPONSIBILITY OF THE PARTIES FOR ACTIONS

The Parties shall at all times comply with and observe all applicable federal, state, and local laws, ordinances, and regulations that are in effect during the term of this Contract that may affect Contractor's work or obligations hereunder.

The Contractor shall be solely responsible for its actions and those of its agents, employees, or Subcontractors. Neither the Contractor nor any of the foregoing parties has authority to act or speak on behalf of the State.

13. DELAY AND REMEDY

In case of failure to deliver Deliverables or Services in accordance with this Contract which the Contractor is unable to cure in accordance with Sections 33 (Receipt of Deliverables) and 34 (Performance) hereof or otherwise in accordance with other cure rights set forth in this Contract, the State may, upon written notice to the Contractor, procure such Deliverables or Services with comparable functionality from other sources as necessary. The Contractor shall be responsible for the additional cost, including the cost of re-procurement, purchase price and administrative fees upon presentation to the Contractor of documentation evidencing such costs. This remedy shall be in addition to any other legal remedies available to the State.

14. WORK CENTER CRITERIA

The Contractor shall implement processes that allow Agencies to satisfy the State's obligation to purchase goods and services produced by Work Centers certified under the State's Work Center Law, §16.752, Wis. Stat. The Contractor shall include goods provided by Work Centers in its catalog for Agencies and block the sale of comparable items to Agencies.

15. NON-APPROPRIATION

The State reserves the right to cancel this Contract in whole or in part without penalty if the Legislature fails to appropriate funds necessary to complete the Contract.

16. CONTRACTOR'S INSURANCE RESPONSIBILITY

All insurance coverage provided relative to this Contract shall be PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the State.

The insurance must be written for not less than any minimum coverage specified in this Contract or required by law, whichever is greater.

The insurers selected by the Contractor must have an A.M. Best rating of A minus or better, or as otherwise approved in writing by the State, or if the ratings are no longer available, with a comparable rating from a recognized insurance rating agency. All policies of insurance required in this Contract must be issued by companies that have been approved to do business in the State.

Where specific limits are shown, they are the minimum acceptable limits. The Contractor is required to pay for and provide the type and amount of insurance below.

16.1. Commercial General Liability. Insurance shall be at the following minimum coverage:

- \$2,000,000 General Aggregate Limit other than Products/Completed Operations
- \$2,000,000 Products/Completed Operations Aggregate Limit
- \$1,000,000 Personal & Advertising Injury Limit
- \$1,000,000 Each Occurrence Limit

Commercial General Liability policy shall be endorsed using ISO forms CG 2010 and CG 2037 (or equivalent) with respect to additional insured, including completed operations.

The Contractor must list the State of Wisconsin, its departments, divisions, agencies, offices, commissions, officers, employees and agents as ADDITIONAL INSUREDS on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

16.2. Auto Liability Insurance. If a motor vehicle is used to provide services or products under the Contract, the Contractor must have vehicle liability insurance on any auto including owned, hired and non-owned vehicles used in Contractor's business for bodily injury and property damage as required by law.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

16.3. Workers' Compensation Coverage. Workers' compensation coverage must be provided according to applicable laws governing the employees and employers work activities in the state of the Contractor's domicile. If a self-insurer provides the applicable coverage, proof must be provided of approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of qualification, Contractor must provide appropriate certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

Any certificates of insurance received must also provide a list of states where the coverage is applicable.

The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company. This provision must not be applicable where prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

- 16.4. Employer's Liability. Insurance with the following minimum limits:
- \$100,000 each accident
 - \$100,000 each employee by disease
 - \$500,000 aggregate disease
- 16.5. Employee Fidelity/Commercial Crime. The State requires Employee Fidelity, including Computer Crimes, insurance, providing coverage for direct loss to the State and any legal liability of the State arising out of or related to fraudulent or dishonest acts committed by the employees of Contractor or its Subcontractors, acting alone or in collusion with others, in a minimum amount of one million dollars (\$1,000,000.00).
- 16.6. Excess Liability. The State requires Umbrella or Excess Liability Insurance in a minimum amount of three million dollars (\$3,000,000.00), which must apply, at a minimum, to the insurance required in Subsection 16.1 (Commercial General Liability) above. Contractor may use any combination of primary and excess to meet required total limits
- 16.7. Professional Liability (Errors and Omissions) Insurance. The State requires professional liability coverage with the following minimums: ten million dollars (\$10,000,000.00) each claim or wrongful act and ten million dollars (\$10,000,000.00) annual aggregate.
- Professional Liability/Privacy Liability Insurance shall cover all acts, errors, omissions, negligence and network risks including coverage for unauthorized access, failure of security, breach of privacy perils, as well as notification costs and regulatory defense in the performance of service for the State of Wisconsin, Such insurance shall be maintained in force at all times during the term of the agreement and for a period of three (3) years thereafter for services completed during the term of the agreement.
- 16.8. Subcontractor Insurance Coverage. Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor must require all of its Subcontractors under this Contract to purchase and maintain the insurance coverage as described in this section for the Contractor in connection with the performance of work by those Subcontractors. Alternatively, Contractor may include any Subcontractors under Contractor's insurance on the coverage required in this section. Subcontractor(s) must fully comply with the insurance coverage required in this section. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.
- 16.9. Certificates of Insurance and Other Requirements. Contractor must furnish to the State, certificate(s) of insurance verifying insurance coverage or providing satisfactory evidence of self-insurance as required in this section (the "Certificates"). The Certificate must be on the standard "accord" form or equivalent. The Contract Number or the Purchase Order Number must be shown on the Certificate of Insurance to Assure Correct Filing. All Certificate(s) are to be prepared and submitted by the Insurance Provider. Contractor shall provide at least thirty (30) days advanced written notice to the state of any cancellation or non renewal of any required coverage that is not replaced. The Contractor is responsible to provide this notice upon receipt and must include the Contract or Purchase Order number affected. Before the Contract is signed, and not less than twenty (20) days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the State and its agents, officers and employees are listed as additional insured under each commercial general liability and commercial automobile liability policy. In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Wisconsin.

The Contractor must maintain all required insurance coverage throughout the term of the Contract and any extensions and, in the case of claims-made Commercial General Liability policies, must secure tail coverage for at least three years following the expiration or termination for any reason of this Contract. The minimum limits of coverage specified above are not intended, and must not be construed; to limit any

liability or indemnity of Contractor under this Contract to any indemnified party or other persons. Contractor is responsible for all deductibles with regard to the insurance. If the Contractor fails to pay any premium for required insurance as specified in this Contract, or if any insurer cancels or significantly reduces any required insurance as specified in this Contract without the State's written consent, then the State may, after the State has given the Contractor at least thirty (30) days written notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the Contractor, or the Contractor must pay that cost upon demand by the State.

17. NONDISCRIMINATION AND AFFIRMATIVE ACTION

The Contractor shall not discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, national origin, developmental disability as defined in § 51.01(5), Wis. Stats., or sexual orientation as defined in §111.32(13m), Wis. Stats. This provision shall include, but is not limited to, employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Contractor shall take affirmative action to ensure equal employment opportunities.

Unless exempted by workforce size (50 or fewer employees) or Contract amount (\$50,000 or less), the Contractor must submit a written affirmative action plan to the State.

The Contractor shall post a notice provided by the State, setting forth the provisions of the State's nondiscrimination laws, in its workplace, website or conspicuous places in order that the Contractor's employees and applicants for employment are able to read it.

Failure to comply with the conditions of this provision may result in the following consequences:

- termination of this Contract as provided in Section 8 (Contract Cancellation) herein,
- designation of the Contractor as "ineligible" for future consideration as a responsible, qualified Proposer or proposer for State contracts, or
- withholding of a payment due under the Contract until the Contractor is in compliance

18. STATE PAYMENT OFFSETS FOR CONTRACTOR'S TAX DELINQUENCY

In accordance with Wis. Stat. ss. 16.767 and 73.12, the State may offset payments made to the Contractor under this Contract in an amount necessary to satisfy a certified or verifiable delinquent tax liability owed to the State, or to any state or local unit of government. The State also reserves the right to cancel this Contract as provided in Section 8, Contract Cancellation, if the delinquency is not satisfied by the offset or other means during the term of the Contract.

19. CONTRACTOR INDEMNIFICATION

- 19.1. General Indemnity. Contractor shall hold the State harmless and shall defend and indemnify the State, its Agencies, officers and employees against any and all third party claims, suits, actions, liabilities and costs of any kind, including attorney's fees, for personal injury or damage to real or tangible personal property to the extent that such liability, loss, damage or expense was proximately caused by the negligent acts or omissions or the willful misconduct of the Contractor, its agents, officers, employees or Subcontractors in performing Services or providing Deliverables under this Contract. Contractor shall not be liable under Section 19.1 (General Indemnity) for damages caused by services or equipment that is not furnished by Contractor or its Subcontractors under this Contract. Section 19.2 (Limitation of Liability) below, shall control with respect to the process for invoking defense or settlement of a third Party claim under this section.

- 19.2. Limitation of Liability. Contractor's entire liability to the State for claims or damages arising under this Contract shall be limited to proven direct damages and shall not exceed, during any twelve (12) month period, an amount equal to the total net charges incurred by the State for Services and Deliverables during the twelve (12) month period preceding the month in which the claim arose. IN FURTHERANCE OF THE FOREGOING, CONTRACTOR WILL NOT BE LIABLE TO THE STATE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OR FOR INCREASED COSTS OF OPERATIONS.
- 19.3. THE LIMITATIONS SET FORTH IN SECTION 19.2 (LIMITATION OF LIABILITY) ABOVE SHALL NOT APPLY TO PROVEN DAMAGES RESULTING FROM: (A) BODILY INJURY, DEATH OR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY CONTRACTOR'S NEGLIGENCE; (B) LOSSES ARISING OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CONTRACTOR; AND (C) LOSSES ARISING OUT OF CONTRACTOR'S OBLIGATIONS TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE STATE AGAINST THIRD PARTY CLAIMS AS SET FORTH IN SECTIONS Section 19.2 (Limitation of Liability), Section 20.2 (Equitable Relief) and Section 21 (Intellectual Property Infringement) OF THE CONTRACT.
- 19.4. The limitations in this Section 19.2 (Limitation of Liability) shall not limit the State's responsibility for the payment of all properly due charges under this Contract or prevent either Party from seeking injunctive or other equitable relief.
- 19.5. Application and Survival. The disclaimer of warranties and limitations of liability set forth in this Contract will apply regardless of the form of action, whether in contract, equity, tort, strict liability or otherwise, of whether damages were foreseeable and of whether a Party was advised of the possibility of such damages and will apply so as to limit the liability of each Party their respective employees, agents, directors, subcontractors and suppliers.

20. CONFIDENTIAL INFORMATION

- 20.1. Disclosures. In connection with the Contractor's performance hereunder, it may be necessary for the State to disclose to the Contractor Confidential Information. The Contractor shall not use such information for any purpose other than the limited purposes set forth in this Contract, and all related and necessary actions taken in fulfillment of the obligations thereunder. The Contractor shall hold all such information in confidence, and shall not disclose such information to any persons other than its directors, officers, employees, and agents who have a business-related need to have access to such information in furtherance of the limited purposes of this Contract and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Contract.

Contractor shall institute and maintain such security procedures as are commercially reasonable to maintain the confidentiality of such information while in its possession or control, including transportation, whether physically or electronically.

Contractor shall ensure that all indications of confidentiality contained on or included in any item of such information shall be reproduced by Contractor on any reproduction, modification, or translation of such Confidential Information. If requested by the State, Contractor shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain such information of the State, as directed.

The Contractor shall maintain all such information for a period of three (3) years from the date of termination of this Contract, and shall thereafter return or destroy said information as directed by the State.

20.2. Equitable Relief; Indemnification in Event of Contractor Breach.

- (a) *Indemnification*: In the event of a breach of this Section by Contractor, Contractor shall indemnify, defend and hold harmless the State of Wisconsin and any of its officers, employees, or agents from any claims arising from the acts or omissions of the Contractor, and its Subcontractors, employees and agents including, but not limited to, disallowances or penalties from federal oversight agencies, and any court costs, expenses, and reasonable attorney fees, incurred by the State in the enforcement of this Section and, with respect to Personally Identifiable Information, the costs of monitoring the credit of all persons whose Personally Identifiable Information was disclosed.
- (b) *Equitable Relief*: The Contractor acknowledges and agrees that the unauthorized use, disclosure, or loss of Confidential Information may cause immediate and irreparable injury to the individuals whose information is disclosed and to the State, which injury will not be compensable by money damages and for which there is not an adequate remedy available at law. Accordingly, the parties specifically agree that the State, on its own behalf or on behalf of the affected individuals, may seek injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting security and without prejudice to such other rights as may be available under this Contract or under applicable law.

21. INTELLECTUAL PROPERTY INFRINGEMENT AND LABOR STANDARDS

21.1. The Contractor represents to the best of its knowledge that any items provided to the State hereunder were manufactured or produced in accordance with applicable state and federal labor laws, and that the sale or use of said items shall not infringe any United States patent, copyright, or other intellectual property rights of other. The Contractor shall, at its own expense, indemnify, defend and hold the State harmless and either settle any third Party claim against the State or pay any damages that a court finally awards against the State for a claim by a third Party alleging that a Service or Deliverable provided to the State under this Contract infringes any alleged United States patent, copyright or other intellectual property right of such third Party due to the sale or use of such items under this Contract, provided that the Contractor is promptly notified of such suit, and is given all related documents. The Contractor shall have no obligation under the immediately preceding sentence to the extent that the claimed infringement arises out of or results from: (i) the State's BCN Customer's content (excluding content generated by Contractor or its Subcontractors); (ii) modifications to the Service or Deliverable by the State BCN Customer, or combinations of the Service or Deliverable with any non-Contractor services or products by State BCN Customer (except when done at the request or suggestion of the Contractor or its Subcontractors); (iii) Contractor's adherence to State's or an BCN Customer authorized user's written requirements, other than this Contract and with the clarification that placing an order in the manner expected under this Agreement is not a written requirement to which this exclusion applies.

If Contractor's provision of or the State's use of any Service or Deliverable is enjoined or likely to be enjoined as a consequence of a third-party claim or action Contractor shall promptly at its own expense take one of the following actions: (i) procure the right for the State to continue using the Service or Deliverable; (ii) modify the alleged infringing Service or Deliverable so that it becomes non-infringing, provided that any such modification does not materially impair the intended use of the Service or Deliverable as contemplated hereunder; or (iii) substitute for such Service or Deliverable a functionally equivalent, non-infringing Service or Deliverable at no increase in cost to the State. If those alternatives are not feasible, the State may terminate the affected Service or Deliverable without liability or penalty. Contractor shall refund to the State any prepaid non-usage based charges for Service or Deliverable not received due to such termination, and the State will be entitled to reduce any minimum purchase or revenue commitments.]

21.2. Notice and Cooperation. The State shall provide notice to the Contractor promptly upon learning of any claim for which a defense or settlement may be sought under Section 19.1 (General Indemnity) or Section 18 (Intellectual Property Infringement) provided that failure to do so shall not affect the obligations of Contractor, except to the extent Contractor is prejudiced thereby. The State will allow the Contractor to control the defense and settlement of the claim and cooperate with the defense.

22. SECURITY AND SAFETY OF PREMISES, EQUIPMENT, PERSONNEL AND DATA SECURITY

22.1. During the performance of Services under this Contract, the Contractor may have access to the personnel, premises, equipment, and other property, owned by the State or BCN Customers. The Contractor shall preserve the safety, security, and the integrity of the personnel, premises, equipment, and other property of the State, in accordance with State's security and safety policies identified in Exhibit 3-DET Security Policies. The Contractor shall be responsible for damage to the State's equipment and workplace, when such damage or loss is caused by the negligence or willful misconduct of Contractor, Contracted Personnel, or Subcontractors, except to the extent that such damage or loss is caused by the independent acts or omissions of the State or BCN Customer's personnel. This remedy shall be in addition to any other remedies available to the State by law or in equity.

22.2. **Access Right.** (a) Subject to subsection (b) below, State or BCN Customer will in a timely manner allow Contractor access as reasonably required for the Services and Deliverables to property and equipment that the State or the BCN Customer controls and will obtain at the State or BCN Customer's expense timely access for Contractor as reasonably required for the Services and Deliverables to property controlled by third parties such as the State or BCN Customer's landlord. Contractor will coordinate with and, except in an emergency, obtain the State or BCN Customer's prior consent to enter upon its property and premises as may be necessary to provide the Services and Deliverables, which consent shall not be unreasonably withheld. Access rights mean the right to construct, install, repair, maintain, replace and remove access lines and network facilities and the right to use ancillary equipment space within a building for the State or BCN Customer's connection to Contractor's network. The State or BCN Customer must provide Contractor timely information and access its facilities and equipment as Contractor reasonably requires for the Services and Deliverables subject to State or BCN Customer's reasonable security policies. Contractor, BCN Customer and the building/property owner if different from BCN Customer share responsibilities in the following manner:

- (a) Construction to the property line: Contractor is responsible for all inherent costs to provide service to the BCN Customer property line.
- (b) From the BCN Customer property line to the side of the building: The building owner jointly with the BCN customer is responsible for all inherent costs to provide conduit and/or interduct from the property line to the building. Contractor shall be responsible for all material and labor to provide and pull cabling required to provide the service through that conduit and/or interduct.
- (c) Building penetration: The building owner jointly with the BCN Customer, is responsible for all inherent costs to penetrate the building and provide a sleeve to connect the outside conduit and/or interduct to the inside conduit and/or interduct. Contractor shall be responsible for all material and labor to provide and pull cabling required to provide the service through that sleeve.
- (d) MPOP: The building owner jointly with the BCN Customer, is responsible for all inherent costs required to provide conduit and/or interduct from the inside sleeve to the Contractor's minimum point of penetration (MPOP) in the building. Contractor shall be responsible for all material and labor to provide and pull cabling required to provide the service through that conduit and/or interduct to the MPOP (where the service to be installed/delivered).

- (e) Inside demarcation extension: The building owner jointly with the BCN customer is responsible for all inherent costs to provide material and labor from the MPOP to another demarcation point in the building.

- 22.3. **Safe Working Environment.** State or BCN Customer will ensure that the location at which Contractor installs, maintains or provides Services or Deliverables is a safe working environment, free of Hazardous Materials and reasonably suitable for the Services or Deliverables. "Hazardous Materials" mean any substance or material capable of posing an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal or release is regulated by any law related to pollution, to protection of air, water or soil or to health and safety. Contractor shall have no obligation to perform work at a location that is not a suitable and safe working environment or to handle, remove or dispose of Hazardous Materials. Contractor will notify the State immediately if it becomes aware that an environment is unsafe or contains Hazardous Material and shall take no action to introduce Hazardous Materials to a location.
- 22.4. **Network and Data Security.** Contractor shall maintain and implement commercially reasonable network and data security procedures and controls with respect to the Services and Deliverables provided under this Agreement and with respect to any data in systems owned or managed by Contractor or Subcontractors. Specifically, Contractor shall maintain and implement commercially reasonable organizational, administrative, technical, physical and logical safeguards designed to protect Contractor's network, systems, databases, equipment, files, and locations against unlawful or unauthorized access or intrusion by third parties. State shall maintain and implement commercially reasonable security procedures and controls to protect its own data, including but not limited to the employment of adequate encrypting and/or camouflaging technologies, and in no event shall Contractor be liable for any damages or losses that could have been prevented by such measures.
- 22.5. **Privacy.** Each party is responsible for complying with the privacy laws applicable to its business. Contractor shall require its personnel, agents and contractors around the world who process Customer Personally Identifiable Information to protect Customer Personally Identifiable Information in accordance with the data protection laws and regulations applicable to Contractor's business and the State. If State does not want Contractor to comprehend State data to which it may have access in performing Services, State must encrypt such data so that it will be unintelligible. State is responsible for obtaining consent from and giving notice to its users, employees and agents regarding State's and Contractor's collection and use of the user, employee or agent information in connection with a Service. State will only make accessible or provide Customer Personally Identifiable Information to Contractor when it has the legal authority to do so.

23. RENDERING OF SERVICES

The Contractor shall render Services with all due skill, care, and diligence, in accordance with accepted industry practices and legal requirements, and to the State's satisfaction; the State's decision in that regard shall be final and conclusive, subject to the dispute resolution provisions set forth in Section 54 (Contract Dispute Resolution) hereof and cure rights available to Contractor hereunder. The State may inspect, observe and examine the performance of the Services rendered on the State's premises at any time. If the State notifies the Contractor, in writing, that any part of the Services rendered are inadequate or differ from the Contract requirements with the result that the State is materially adversely impacted other than as a result of the State's Default or negligence, the Contractor shall at its own expense re-schedule and perform the corrective work in a manner and within a schedule mutually agreed to by the Parties. This remedy shall be in addition to any other remedies available to the State by law or in equity.

24. CONTRACTOR PERFORMANCE REPORTING

Contractor will provide management reporting related to service performance. Reporting will conform to the template and requirements in Exhibit 1-Scope of Services. Contractor shall be responsible for submitting the report every quarter to: WIBadgerNet@wisconsin.gov and DOADETTelecomAdministration@wisconsin.gov within fifteen (15) days of the end of the quarter. The first report is due the fifteenth day of the fourth month after contract execution, and will cover the previous three-month service period. If there were no outages for the reporting period it should be indicated on the report.

25. ANNUAL RATE AND TECHNOLOGY REVIEW

Annually, in October, after the initial year of the Contract Term and for the term of the Contract, the Contractor and State shall review the performance of the Agreement, provision of the Services and technology trends to reflect the current environment. At this time only, Contractor may submit proposed changes to technologies, and contract pricing. Proposed changes will be reviewed solely by State, and may be implemented at the sole discretion of State, Proposals must include written documentation demonstrating the additional value to the State. All amendments resulting from such accepted changes shall be fully executed by the parties within thirty (30) days of the acceptance of the proposed change and shall be implemented within sixty (60) days of execution or as mutually agreed to by the parties.

During the term of this Contract, the Contractor is not authorized to substitute for any Service identified in Exhibit 6, Pricing. Violation of this condition may be considered grounds for termination of the Contract.

26. E-RATE

During the term of this Contract, Contractor and the State shall be compliant with all applicable federal E-Rate program requirements.

26.1. Single Point of Contact

The Contractor shall designate a Single Point of Contact (SPOC) for all matters related to the E-Rate program prior to contract signature.

26.2. FCC Registration Number

Contractor shall have a Federal Communications Commission Registration Number (FCCRN) which may be obtained via the FCC website.

26.3. Service Provider Identification Number (SPIN)

For the term of this Contract, Contractor shall have a SPIN in good standing with the E-Rate Administrator (i.e. not in "Red Light" status except for temporary administrative Red Light occurrences which are promptly resolved by Contractor).

26.4. Category 1 Services Eligibility

For the term of this Contract, Contractor shall be designated by the Schools and Libraries Division of the Universal Service Administrative Company to provide Category 1 Eligible Services. The Contractor shall have a continuing obligation to notify the State TEACH Administrator (teach@wisconsin.gov / 608-261-5054) of any change in Red Light status and failure to maintain good standing with the FCC and to be classified as on Red Light status may constitute grounds for terminating the parties' contract for cause the foregoing termination right shall not apply to temporary administrative Red Light occurrences which are promptly resolved by Contractor.

27. CONTRACTOR PERSONNEL

27.1. Identification

If requested by the State, the Contractor shall via email provide a list of the names work-related street and company email address along with telephone numbers and titles of all Contractor's employees, Contracted Personnel, or Subcontractor's employees who may at any time require admission to the State's premises in connection with the rendering of Services, specifying each such person's connection to the Contractor, the role the person is to take in the performance of the Contract, and

other particulars as the State may require. The State acknowledges and agrees that the information described in this provision may not be available until such time as the State and Contractor have agreed on the solution and identified the sites requiring the presence of such personnel. Once the sites have been determined and site visit scheduled, Contractor agrees that it shall provide such information within forty-eight (48) hours of such site visit. Contractor shall be solely responsible for the actions of its Subcontractors and for ensuring that they comply with the terms of this Contract.

The State reserves the right to refuse to admit to the State's premises any person employed or contracted by the Contractor whose admission would be undesirable for any lawful reason. The State may request, and Contractor will take reasonable steps to accommodate, that the Contractor remove or reassign any person employed or contracted by the Contractor who the State indicates is unqualified or underperforming or any other lawful reason. The State may not exercise this right in a manner that obligates Contractor to perform an unlawful act.

27.2. Right to Approve Changes of Key Personnel

Contractor shall offer the State an opportunity to meet and be consulted regarding each individual that Contractor intends to assign to a Key Personnel position and to raise any objections to the assignment of a particular individual to such a position, provided that no such objection by the State shall be based on unlawful grounds or on grounds unrelated to the individual's job performance.

27.3. Contracted Personnel Removal

The State may request that the Contractor remove or reassign Contracted Personnel for any lawful reason, if the State believes that such individual is not qualified to perform the work to which he or she is assigned. However, the State's right to do so does not implicate the State as a party to any of the Contractor's obligations in the Contract. Upon receipt of such request, Contractor will review the matter with the State and shall take reasonable steps to accommodate the State's request. The State may not exercise this right on grounds unrelated to job performance or in a manner that obligates Contractor to perform an unlawful act. In the event that such Contracted Personnel is removed from a position, Contractor shall promptly respond and employ a replacement, provided it shall have a reasonable time to replace such employee.

27.4. Identification of Contracted Personnel

The Contractor shall furnish each Contracted Personnel with a means of identifying themselves as agents, Subcontractors, or employees of the Contractor assigned to perform Services under the Contract. The State may require that any Contracted Personnel be badged as a requirement of access to State premises.

27.5. Background or Criminal History Investigation

Prior to the commencement of any Services under this Contract, the State may request a background or criminal history investigation of Contracted Personnel, and Subcontractor's employees, who will be providing Services to the State at certain sites that may have special access and security requirements, including, without limitation, mandatory background and security checks for Contractor and Contractor subcontractor personnel working at such sites under the Contract. Such background and criminal history tests may be in addition to such investigations required by Contractor for its own personnel as well as subcontractor personnel. Contractor will not engage any person in the performance of Services under this Contract if the results of such persons' background check do not meet the applicable test criteria, and will remove or reassign any person if it later learns that the person would not qualify if the background test was done. The Contractor will certify on an annual basis that it is in compliance with this requirement and shall provide the State the applicable test criteria it uses for its screening upon request. The Parties acknowledge and agree that any information about the Contracted Personnel and Subcontractor's employees with respect to background checks, criminal history investigations and related screenings will be deemed to be Personally Identifiable Information which the Contractor cannot disclose.

28. SHIPPING

Except as otherwise specified herein, Deliverables shall be shipped, F.O.B. Destination, and the State shall accept legal title of Deliverables at the point of delivery. Freight charges shall not be paid by the State, but rather shall be prepaid by the Contractor. Unless otherwise specified, the Contractor shall determine the mode of freight and shall accept responsibility for payment of freight charges and processing of freight claims.

29. RISK OF LOSS

The Contractor shall bear all risks of loss, injury or destruction of the Deliverables ordered herein that occur prior to delivery. Such loss, injury or destruction shall not release the Contractor from any obligation hereunder.

30. IDENTIFICATION

All invoices, packing lists, packages, shipping notices, instruction manuals, and other written documents affecting an order hereunder shall contain the applicable State Purchase Order number if applicable. . Packing lists shall be enclosed in each and every box or package shipped pursuant to an order, indicating the contents therein. Standard commercial packaging, packing and shipping containers shall be used. If requested by the State, all shipping containers shall be legibly marked or labeled on the outside with State Purchase Order number, product description, and quantity, or as otherwise directed by the State.

31. LIENS, CLAIMS AND ENCUMBRANCES

The Contractor warrants and represents that all Deliverables ordered hereunder are free and clear of all liens, claims or encumbrances of any kind.

32. WARRANTY OF ITEMS

Deliverables and Services rendered shall be strictly in accordance with the order placed and may not deviate in any way from the terms, conditions or specifications of this Contract, without the prior written approval of the State. Services and Deliverables delivered under this Contract are subject to Inspection and testing upon receipt

The Contractor warrants that the Deliverables provided shall conform to the specifications in this Contract, are fit and sufficient for the purpose manufactured, of good material and workmanship, and free from defect. Deliverables offered must be new and unused and of the latest model or manufacture, unless otherwise specified by or agreed to by the State. Items shall be equal in quality and performance to the standards indicated herein. Deliverables delivered that do not conform to the Contract terms, conditions, and specifications may be rejected and returned at the Contractor's expense. The Contractor shall assign to the State its right to recover under any warranties applicable to the Deliverables offered. [Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance, and/or use desired.].

33. RECEIPT OF DELIVERABLES

The State's receipt of Deliverables upon delivery is for the sole purpose of identification. Such identification shall not be construed as Acceptance of the Deliverables if they do not conform to contractual requirements. If there are any apparent defects in the Deliverables at the time of delivery, the State shall promptly notify the Contractor of its rejection of said Deliverables. Without limiting any other rights, the State, at its option, may require the Contractor to:

- Repair or replace any or all of the defective and rejected Deliverables at Contractor's expense,
- Refund the price of any or all of the defective and rejected Deliverables, and
- Accept the return of any or all of the defective and rejected Deliverables.

If rejected, the Deliverables shall remain the property of the Contractor.

34. PERFORMANCE

Services rendered under this Contract shall be performed in a timely, professional and diligent manner by qualified and efficient personnel and in conformity with the strictest quality standards mandated or recommended by all generally recognized organizations establishing quality standards for the type of Services to be rendered hereunder. The Contractor shall be solely responsible for controlling the manner and means by which it and its Contracted Personnel or its Subcontractors render Services and the Contractor shall observe, abide by and perform all of its obligations in accordance with all applicable legal requirements and State or Agency work rules (written copies of such work rules will be posted at such locations or delivered to the Contractor by the State or appropriate agency prior to the Contractor commencing work at a site governed by such rules).

Without limiting the foregoing, the Contractor shall control the manner and means of the Services rendered so as to do so in a reasonably safe manner and in compliance with all applicable codes, regulations and requirements imposed or enforced by any government agencies, including all applicable requirements of the Occupational Safety and Health Administration (OSHA) and all safety codes and procedures mandated or recommended by insurance underwriting organizations and all generally recognized organizations establishing safety standards, including without limitation the National Fire Protection Association. Notwithstanding the foregoing, any stricter standard provided in plans, specifications or other documents incorporated as part of this Contract shall govern.

35. SPECIFICATIONS

The apparent silence of the State's specifications as to any detail, or the apparent omission of a detailed description concerning any matter, shall be regarded as meaning that only the best commercial practice shall be followed and only material and workmanship of the first quality may be used. Upon any notice of noncompliance provided by the State, Contractor shall supply proof of compliance with the specifications. Contractor shall provide written notice of its intent to deliver alternate or substitute Services or Deliverables. Alternate or substitute Services or Deliverables may be accepted or rejected in the sole discretion of the State; and any such alternates or substitutes shall be accompanied by Contractor's certification and evidence satisfactory to the State that the function, characteristics, performance and endurance shall be equal or superior to the original Services or Deliverables specified.

36. INDEPENDENT CONTRACTOR

The Contractor shall act as an independent contractor in rendering any and all Services under this Contract and, except as otherwise outlined herein, shall maintain complete control over its employees, Contracted Personnel, and Subcontractors, if any.

37. COOPERATION WITH OTHER CONTRACTORS

37.1. In the event that the State enters into a contract with another contractor for additional Services, the Contractor shall ensure that Contracted Personnel fully cooperate with such other contractor. Contracted Personnel shall not commit any act that interferes with the rendering of Services by any other contractor or by the State. Contracted Personnel shall cooperate with State personnel, hardware manufacture representatives, system software suppliers, and communications systems suppliers in the provision of Services to the State.

37.2. In the event that the State enters into a contract with another vendor for additional Services, the State shall require that the vendor shall not commit any act that interferes with the rendering of Services by Contracted Personnel.

38. STATE EMPLOYEES

The Contractor may not contract with or employ a State employee or an individual retained as a full-time contractor by the State during the term of this Contract, to the extent that such State employee or full-time contractor had direct contact with Contractor Key personnel performing Services under this Agreement. The foregoing shall not restrict the Contractor from contracting with or employing a State employee or full-time contractor of the State through a general solicitation or other employment search not involving Contractor Key Personnel.

39. ANTITRUST ASSIGNMENT

By entering into this Contract, the Contractor conveys, sells, assigns and transfers to the State all rights, title and interest in and to all causes of action, claims and demands of whatever nature it may now have or hereafter acquire under the antitrust laws of the United States and the State, relating specifically to that proportionate amount of the particular Deliverables or Services purchased or acquired by the State under this Contract.

40. REFUND OF CREDITS

If applicable, within ninety (90) Days of the State's request, the Contractor shall pay to the State any credits resulting from an order that the State determines cannot be applied to future invoices.

41. OWNERSHIP RIGHTS

Unless an ownership interest is granted or reserved in this Contract, a State Purchase Order or similar document such as a service order issued under this Contract shall allow the State unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to the State as part of the performance of the Contract.

42. DATA OWNERSHIP

The State of Wisconsin shall own the rights to all data/records produced as part of the Contract

Any pre-existing intellectual property into the project, the intellectual property shall be identified as such by the Contractor.

43. RIGHTS TO ELECTRONIC INFORMATION

The State owns the rights to all electronic information and all supporting documentation created for the State as part of the Contract. Contractor shall deliver sufficient technical documentation with all data deliverables to permit the State to use the data.

44. RIGHTS TO DATA

The State is the owner of all data made available by the State to the Contractor or its agents, Subcontractors or representatives under the Contract. The Contractor shall not use the State's data for any purpose other than providing the Services, nor shall any part of the State's data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties or commercially exploited by or on behalf of the Contractor. No employees of the Contractor, other than those on a strictly need-to-know basis, shall have access to the State's data. The Contractor shall not possess any lien or assert any lien or other right against the State's data. Without limiting the generality of this Section, the Contractor must only use Personally Identifiable Information as strictly necessary to provide the Services and must disclose the information only to its employees who have a strict need to know the information. The Contractor must comply at all times with all laws and regulations applicable to Personally Identifiable Information.

The State is the owner of all State-specific data under the Contract. The State may use the data provided by the Contractor for any purpose.

45. PROMPT PAYMENT

The State shall pay the Contractor's properly-submitted Invoices within forty-five (45) Days of the date of the invoice, provided that the Deliverables or Services to be provided to the State have been delivered, rendered, or installed, and accepted as specified in this Contract.

If the State fails to pay a properly-submitted invoice within forty-five (45) Days of the date of the invoice, it shall pay a late payment penalty as provided in §16.528, Wis. Stats. However, if the State declares a good faith dispute in regard to an invoice pursuant to §16.528 (3)(e), Wis. Stats., it may pay any undisputed portion of said invoice, and will be exempt from the prompt payment requirement for the disputed portion.

45.1. Delayed Billing; Disputed Charges. If Customer disputes a charge, Customer will provide notice to AT&T specifically identifying the charge and the reason it is disputed within six (6) months after the date of the invoice in which the disputed charge initially appears, or Customer waives the right to dispute the charge. Customer may incur late payment fees. Following AT&T's notice of the results of its investigation to Customer, payment of all properly due charges and properly accrued late payment fees must be made within ten (10) business days. AT&T will reverse any late payment fees that were invoiced in error. Customer will not be required to pay charges for Services initially invoiced more than six (6) months after close of the billing period in which the charges were incurred, except for calls assisted by an automated or live operator.

46. STATE TAX EXEMPTION

The State is exempt from payment of Wisconsin sales or use tax on all purchases and will provide all required tax exemption certificates.

47. PROMOTIONAL ADVERTISING AND NEWS RELEASES

Reference to or use of the State of Wisconsin, the Great Seal of the State, the Wisconsin Coat of Arms, any Agency or other subunits of the State government, or any State official or employee, for commercial promotion is strictly prohibited. News releases or release of broadcast e-mails pertaining to this Contract shall not be made without prior written approval of the State.

48. NOTICE AND CHANGE OF CONTACT INFORMATION

Any electronic transmission or hand delivery of notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery or three (3) Business Days after mailing by postal service, certified or registered mail-receipt requested.

In the event the Contractor moves or updates contact information, the Contractor shall inform the State of such changes in writing within ten (10) Business Days. The State shall not be held responsible for payments on Purchase Orders delayed or not delivered due to the Contractor's failure to provide such notice as stated in the immediate preceding sentence.

49. RECORDS, RECORDKEEPING AND RECORD RETENTION

Pursuant to §19.36 (3) of the Wisconsin Statutes, all records of the Contractor that are produced or collected under this Contract are subject to disclosure pursuant to a public records request. The Contractor shall establish and maintain adequate records of all documentation developed or compiled and expenditures incurred under this Contract. All expenditure records shall be kept in accordance with Generally Accepted Accounting Procedures (GAAP). All procedures shall be in accordance with federal, State and local laws or ordinances. The Contractor, following final payment, shall retain all records produced or collected under this Contract for three (3) years.

50. EXAMINATION OF RECORDS

Subject to Contractor's reasonable building security requirements and other legal and regulatory restrictions applicable with respect to third Party access to Contractor's facilities, the State shall, at any mutually convenient time during normal business hours, upon reasonable written notice, have access to and the right to examine, audit, excerpt, transcribe, and copy, on Contractor's premises, any of the Contractor's records and computer data storage media involving transactions directly pertinent to the amounts expended by the State [billing records] or Services or Deliverables provided or contracted for, pursuant to this Contract. If the material is on computer data storage media, the Contractor shall provide copies of the data storage media or a computer printout of such if the State so requests. Any charges for copies of books, documents, papers, records, computer data storage media or computer printouts provided by the Contractor shall not exceed the actual cost to the Contractor. This provision shall survive the termination, cancellation, or expiration of this Contract for a period of three (3) years

51. BREACH NOT WAIVER

A failure to exercise any right, or a delay in exercising any right, power or remedy hereunder on the part of either party shall not operate as a waiver thereof. Any express waiver shall be in writing and shall not affect any event or Default other than the event or Default specified in such waiver. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The making of any payment to the Contractor under this Contract shall not constitute a waiver of Default, evidence of proper Contractor performance, or Acceptance of any defective item or work furnished by the Contractor.

52. ASSIGNMENT OF CONTRACT

The Contractor shall provide prior written notice to the State before assigning this Contract to another party provided however Contractor may, without State's consent, assign in whole or relevant part its rights and obligations under this Agreement to an Affiliate and will remain financially responsible for the performance of such obligations. The State reserves the right to withhold approval of any assignment to a non-Affiliate of Contractor so long as such approval is not unreasonably withheld or delayed so long as such approval is not unreasonably withheld or delayed. The terms and conditions of this Contract as well as any rights obligations and liabilities associated with such shall survive any and all assignments, mergers, or acquisitions by a third Party until cancelled in writing by both parties.

53. SEVERABILITY

If any provision of this Contract is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Contract shall remain valid and in full force and effect. The invalid provision shall be replaced by a valid provision that comes closest in intent to the invalid provision.

54. CONTRACT DISPUTE RESOLUTION

Except for claims for provisional equitable relief, in the event of any dispute or disagreement between the parties under this Contract, whether with respect to the interpretation of any provision of this Contract, or with respect to the performance of either party hereto, each party shall appoint a representative to meet for the purpose of endeavoring to resolve such dispute or negotiate for an adjustment to such provision as defined herein. No legal action of any kind, except for the seeking of equitable relief in the case of the public's health, safety or welfare, may begin in regard to the dispute until this dispute resolution procedure has been elevated in accordance with the escalation procedures set forth below, and either of the representatives in good faith concludes, after a good faith attempt to resolve the dispute, that amicable resolution through continued negotiation of the matter at issue does not appear likely.

For other than billing disputes, prior to the initiation of any action or proceeding under this Agreement to resolve disputes between the parties, the parties shall make a good faith effort to resolve any such disputes by negotiations between their respective representatives having decision-making authority. If the designated representatives cannot resolve the dispute, then the dispute shall be escalated to the State's Chief Information Office/Administrator of Division of Enterprise Technology and the Contractor Sales Center Vice President of Contractor for their review and resolution. If the dispute is not resolved at that level, the dispute shall then be escalated to the Secretary of the Wisconsin Department of Administration and the Contractor Regional Vice President for their review and resolution.

54.1. No Termination or Suspension of Services

If any problem or dispute arises between the parties, in no event nor for any reason and unless and until authorized by a court of competent jurisdiction, shall Contractor interrupt the performance of the Services or any other obligation hereunder, disable any equipment used in the Services, or perform any other action that prevents, slows down, or reduces in any way the performance of the Services or the State's ability to conduct its business; provided, however, the foregoing shall not limit or otherwise restrict Contractor's rights to suspend Services pursuant to Section 9 of this Contract.

55. FORCE MAJEURE

Except for payment of amounts due neither Party shall be in Default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the Party. Both Parties shall pay for amounts and perform all obligations (unless prohibited by a Force Majeure event) due prior to or unaffected by the Force Majeure event.

56. TIME IS OF THE ESSENCE

Timely provision of Services or Deliverables and any payments required under this Contract shall be of the essence of the Contract, including the provision of Services or Deliverables within the time agreed or on a date specified.

57. NO AGENCY RELATIONSHIP

The Contractor shall not take any action, or make any omission, that may imply, or cause others reasonably to infer that the Contractor is acting as the State's agent in any matter or in any way not expressly authorized by this Contract.

58. DISCLOSURE

If a state public official (as defined in §19.42 (14) of the Wisconsin Statutes) or an organization in which a state public official holds at least a 10% interest is or becomes a party to this Agreement, it shall be voidable by the State unless appropriate disclosure is made to the State of Wisconsin Government Accountability Board, 212 East Washington Avenue, Madison, Wisconsin 53703 (Telephone 608-266-8005).

59. OTHER DOCUMENTS

The parties to this Contract understand and agree that standard forms or templates may be referenced and used for various purposes, including but not limited to, purchase orders, invoices, quotes, 'Website Terms and/or Conditions' or 'click to accept' agreement(s), service guides or service publications or similar documents some of which may contain boilerplate or standard terms and conditions ("Other Documents"). However, any use of Other Documents are not a part of this Contract and are deemed to be for administrative convenience only and the terms therein are of no effect, have no force of law and do not modify the terms of this Contract.

The Parties acknowledge and agree that for purposes of this Contract, the AT&T Authorized User Policy (Exhibit 4) and the AT&T E-rate Rider (Exhibit 5) will not be deemed to be Other Documents.